IN THE ESTATE OF MUJAH JAYAN & ANOR.

v.

DATO' NOORDIN HJ. MD. NOOR

HIGH COURT, BRUNEI
DENYS ROBERTS CJ
[PETITION NO. LA/119/1990]
17 SEPTEMBER 1990

SUCCESSION: *Probate - Administration of Estate - Administrator's conflict of interest - Actions against the deceased's estate - Probate and Administration Act (Cap. 11) [Brunei], ss. 32, 84 - Limitation Act.*

On 28 June 1990 the Probate Officer made an order appointing LTL as administrator of the estate of MAJ (the deceased), limited to the legal action instituted by the applicant against the deceased's estate under the Fatal Accident Acts and the Law Reform Act. It is against this order that LTL is appealing.

On 15 May 1990 the applicant was granted letters of administration to administer the estates of VSO and RDS, who died on 30 December 1989 in a collision involving a Honda car driven by MAJ, who was also killed. According to affidavit evidence, the Honda car was insured with Borneo Insurance.

The applicant is faced with a dilemma because according to the Limitation Act, he is required to institute proceedings within 12 months of the death. As for LTL, his main objection in being appointed administrator is that a conflict of interest will arise since he would be both the administrator of the deceased (MAJ's) estate and employed by the company against which MAJ's administrator wishes to bring an action.

Held:

[1] It is not appropriate that LTL be appointed as administrator of the deceased's estate. In the absence of any other person willing to act as administrator, the Court would appoint, if satisfied that the conditions in s. 32 of the Probate and Administration Act are met, someone who can represent the estate in a more detached manner.

[2] In England, the official solicitor has been appointed for the purpose of an action against the estate of the deceased. The nearest equivalent in Brunei in the Chief Registrar, whom the Court believes to be the most appropriate person to be appointed.

[3] By virtue of s. 32 of the Probate and Administration Act, the Court orders that letters of administration of the personal estate of MAJ be granted to the Chief Registrar, limited to his defending the proposed action by the applicant against the estate of the deceased.

[Appeal allowed.]

Legislation referred to:
Probate and Administration Act (Cap 11) [Brunei], ss. 32, 84

For the appellant - Lam Si Kiong; M/s. Joseph Hoo Morris & Lal
For the respondent - Daljit Singh Sandhu; M/s. Sandhu & Co.

JUDGMENT

Denys Roberts CJ:

This is an appeal under s. 84 of the Probate and Administration Act, Cap 11, against an order made on 28 June by the Probate Officer.

This ordered that Mr. Lim Teck Lee, the assisting managing director of Borneo Insurance Sdn. Bhd. be appointed as an administrator of the estate of Mujah Ak Jayan, limited to the legal action instituted by the applicant against the estate of the deceased under the Fatal Accidents Acts and the Law Reform Act. He also ordered that the costs incurred by Mr. Lim Teck Lee as administrator be paid from the estate of Mujah and that the costs of the application before him be paid by the Borneo Insurance Sdn. Bhd.

It is against this order that Lim Teck Lee has appealed. The applicant, in the proceedings before the Probate Officer, was Dato Noordin bin Haji Mohd Noor, who asked for an order that Mr. Lim Teck Lee be appointed as an administrator of the estate of the deceased, Mujah Ak Jayan, or, if the Court thought Mr. Lim was not a proper person to be appointed as administrator, such other person as the Court thought fit should be appointed.

The applicant was granted letters of administration on 15 May 1990 by the Probate Officer, to administer the estates of Victor S. Quizon and Regelito D. Sison. On 30 December 1989 both were killed when driving a Nissan Pick-up from Kuala Belait towards Bandar Seri Begawan, in a collision with a Honda car driven BF 5887 by Mujah Ak Jayan, who was also killed.

According to an affidavit, sworn on behalf of the applicant, the Honda car, BF 5887, was owned by Sim Ka Ming and insured with Borneo Insurance Sdn. Bhd. The applicant said that he had done his best to find more information about Mujah but that he had failed to discover whether he had any relatives or family and did not even know where he lived or whether he had married or not. He carried out a search of the Probate Registry but nobody has been appointed as administrator of Mujah's estate.

The dilemma which faces the applicant is a real one. The Limitation Act obliges him to institute proceedings within 12 months of the death. This he wishes to do by the appointment of a person against whom he can bring the action. Section 32 of the Probate and Administration Act provides that:

> Where a person dies wholly intestate as to his personal estate but without having appointed an executor thereof willing and competent to take probate, ...or where it appears to the Probate Officer to be necessary or convenient to appoint some person to be the administrator of the personal estate of the deceased or of any part of such estate..., it shall be lawful for the Probate Officer to appoint such other person as the Probate Officer thinks fit to be such administrator...

Section 32 also permits the Probate Officer to attach a limitation to the grant of letters of administration as indeed he did in this case by restricting the representation of Mr. Lim to the action to be brought by the applicant in relation to his death in the motor car accident.

It is to be noted in passing that, under English law, a Court is entitled to appoint a person to represent the estate of the deceased where in any proceeding it appears to the Court that the deceased was interested in the matter in question. There is no such restriction in s. 32 of the Brunei Act, which allows an appointment to be made whenever the Probate Officer thinks 'it is necessary or convenient'; to do so.

Mr. Lim Teck Lee objected, both at the hearing before the Probate Officer and on the appeal, to his appointment as administrator. I can foresee some difficulty in his appointment because of the potential conflict, though I should make it clear that this factor was not mentioned to the Probate Officer by either party. If it had been, it is likely that he would have come to a different conclusion.

If Mr. Lim were appointed as administrator, there would be a real risk that a serious conflict of interest would arise, since he would be both the administrator of Mujah's estate and employed by the company against which Mujah's administrator wishes to bring an action.

For this reason, it does not seem to me to be appropriate that Mr. Lim should be appointed as administrator of the estate. In the absence of any other person who is willing to act as administrator, I should appoint, if satisfied that the conditions in s. 32 are met, somebody who can represent the estate of the deceased in a more detached manner than will be possible for Mr. Lim Teck Lee.

In some of the English cases, the Official Solicitor has been appointed for the purpose of an action against the estate of the deceased. However, such an officer does not appear to exist in Brunei. The nearest equivalent is that of the Chief Registrar, who performs a number of duties under various titles. I believe him to be the appropriate person to be appointed. I assume, without having made any enquiry, that he would have no objection to his appointment for the limited purposes of acting on behalf of the estate for his action. He can, of course, select a firm of local solicitors to act on behalf of the estate if he should receive a writ.

I therefore order, under s. 32 the Probate and Administration Act, that letters of administration of the personal estate of Mujah Ak Jayan be granted to the Chief Registrar, limited to his defending the proposed action by the applicant against the estate of the deceased. That grant will cease on the conclusion of that action.

This leaves the question of costs. I am persuaded that it would be wrong to make an order for costs against the insurance company, which was not a party to the proceeding before the Probate Officer. Nor would it be right to make an order for costs against Mr. Lim himself, since he has succeeded in the action and did not at any stage suggest that he was willing to be appointed as administrator.

Mr. Sandhu, on behalf of the applicant, had suggested that the proper award should be one of costs in the cause. Unfortunately, this would involve awarding costs against somebody who is not a party to this proceeding, since the applicant intends to sue the Borneo Insurance Sdn. Bhd., which did not appear here or below.

The only remaining question is whether there should be no order as to costs. Not without some regret, I have come to the conclusion that the appellant, Mr. Lim, is entitled to his costs, both in front of Probate Officer and on the appeal, since he has succeeded in his objection to being appointed as administrator of the deceased's estate I shall order accordingly.

The costs here and below should be paid by the respondent. Such costs to be taxed if not agreed.

Also found at [1991] 1 CLJ 190